U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34886929

Date: NOV. 14, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that he satisfied at least three of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3) and that he is coming to the United States to continue work in his area of expertise as required by 8 C.F.R. § 204.5(h)(5). We remanded the matter for the entry of a new decision. The Director again denied the petition, concluding that although the Petitioner satisfied three of the initial evidentiary criteria, he did not show his sustained national or international acclaim, demonstrate he is among the small percentage at the very top of the field of endeavor, and establish he is coming to the United States to continue work in his area of expertise. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the appeal.

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the

ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

In addition, the regulation at 8 C.F.R. § 204.5(h)(5) requires that "the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise." The regulation further states that "[s]uch evidence may include letter(s) from prospective employer(s), evidence of pre-arranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." *Id.*

On appeal, the Petitioner submits a brief that does not address all the Director's grounds for denial. Specifically, the Petitioner maintains that he meets the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v). He further argues that the Director's final merits determination was in error because the totality of the evidence shows he is an individual of extraordinary ability who has sustained national or international acclaim and who has risen to the very top of his field.

The Petitioner's appeal does not specifically address or dispute the Director's decision regarding his intent to continue work in his area expertise in the United States.[1] *See* section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. § 204.5(h)(5). Accordingly, we will not address this uncontested ground on appeal, and we deem it to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). *See also Sarin v. United States*, No. 2:22-CV-07498-SVW-JS, 2023 WL 5667531, at *8 (C.D. Cal. July 27, 2023) (affirming our determination that the petitioner waived the director's finding relating to the intent to continue to work in the area of extraordinary ability requirement when it was not explicitly argued or contested on appeal).

Since the waived issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve his appellate arguments regarding his satisfaction of the criterion at 8 C.F.R. § 204.5(h)(3)(v) and the

[1] In denying the petition, the Director determined that the Petitioner's May 2023 statement "lacked detailed plans establishing how you will continue your work in your profession. Statements only expressing your prospective hopes of finding work or offering vague ambitions do not constitute detailed plans or the type of clear evidence that demonstrates eligibility under 8 C.F.R. § 204.5(h)(5)." While we do not agree with the Director's subsequent comment that "the U.S. position offered must be a permanent, full-time job with an employer," the record does not contain letter(s) from prospective employer(s), evidence of pre-arranged commitments such as contracts, or a sufficiently detailed statement from the Petitioner elaborating clear plans on how he intends to continue his work in the United States to demonstrate that he meets the requirements of the regulation at 8 C.F.R. § 204.5(h)(5). Although the Petitioner's statement listed various U.S. research institutions where he asserted that he intended to seek a research position, the record does not include any corroborating, credible evidence to support his claim about obtaining a position at any of the listed institutions.

Director's final merits determination. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

ORDER: The appeal is dismissed.